

### REMARKS

Claims 1 through 10 and 20 through 25 are pending. Claim 26 has been canceled.

#### I. Information Disclosure Statement

The Information Disclosure Statement dated 5 April 2008 was received and placed in the file, but was said not to have been considered. Specifically, the listings for three references were lined through on the Applicants' IDS. Legible copies of those three references are included herewith, and reconsideration of the IDS and acknowledgement of the remaining references is respectfully requested. If Applicants' representative misunderstands the basis for the non-consideration, clarification (preferably by telephone) and an opportunity to cure are also requested.

#### II. Rejections Under 35 U.S.C. 112 and 101

Claim 26 was rejected under 35 U.S.C. 112, second paragraph, and under 35 U.S.C. 101. Claim 26 has been canceled, because the legal rights inherent in a granted U.S. patent including the claims to which claim 26 referred would include the right to prevent third parties from using the inventions of those claims. No legal rights are surrendered by the cancellation of the claim.

#### III. Rejection of Claims 1-5, 20-22, 24, and 25 Under 35 U.S.C. 103

Claims 1 through 5, 20 through 22, 24, and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,464,412 (Schwartz) in view of U.S. Patent No. 2,754,590 (Cohen). The Examiner indicated that Schwartz discloses the subject matter of claims 1 and 25 except that it does not disclose that "movement of said activator member towards said dispensing opening causes movement of said applicator member so that said channel between said main chamber and said auxiliary chamber is formed." Office Action at page 4. The Examiner went on to note that Cohen discloses such a feature, and indicated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the disclosure of the two references, because it has been held that a mere reversal of the essential working parts of a device involves only routine skill. Applicants respectfully disagree for at least the following reasons, and request reconsideration of the rejection.

Applicants agree that Schwartz does not disclose the feature mentioned, but it also does not disclose or suggest another feature of claim 1. Claim 1 recites that "said through-hole and said recessed area form[] a channel between said main chamber and said auxiliary chamber upon activation of said capsule *by said activator member . . .*" This feature is not disclosed in Schwartz, where the inner plunger 30 is pulled backward to activate the capsule. The inner plunger 30 of Schwartz is said in the Office Action to correspond to the "*applicator member*" of claim 1, though, not the "*activator member*." For Schwartz to disclose all that was indicated in the Office Action, the Schwartz capsule would have to be activated by the structure identified at 35, which was said to represent the activator member in Schwartz. It is not activated by that structure. Accordingly Schwartz fails to disclose this feature of the invention of claim 1, and the combination with Cohen does not cure that deficiency. Reconsideration of the rejection of claim

1, which recites in part that the capsule is activated by an activator member, is therefore respectfully requested.

Even if Schwartz were combined with Cohen in the manner suggested in the Office Action, the invention of claim 1 would not result. Schwartz does not disclose that “movement of said activator member towards said dispensing opening causes movement of said applicator member so that said channel between said main chamber and said auxiliary chamber is formed.” In fact Schwartz discloses something else entirely – backward movement of a plunger 30, which is said to be the “applicator member” in Schwartz. Even if the piston rod, handle, and forward movement of Cohen were somehow transplanted into the device disclosed in Schwartz, there is no reason to believe that it could work because it is exactly the backward movement in Schwartz that draws the liquid component into contact with the powder component. In other words, Schwartz and Cohen operate on opposite principles, and the substitution of components from one into the other does not lead to a device that even functions, much less renders obvious claim 1. Reconsideration of the rejection of claim 1 is requested for this reason as well.

Claims 2 through 5, 20 through 22, 24, and 25 all depend either directly or indirectly from claim 1, and are therefore patentable for at least the same reasons. Reconsideration of the rejection of those dependent claims is respectfully requested.

IV. Rejection of Claims 6-10 and 23 Under 35 U.S.C. 103

Claims 6 through 10 and 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz in view of Cohen, and further in view of U.S. Patent No. 5,172,807 (Dragon et al.). These claims all depend either directly or indirectly from claim 1, which is allowable over Schwartz and Cohen for the reasons described above, which are incorporated by reference in their entirety here. Dragon et al. does not cure the deficiencies in the disclosure of either or both of the primary references, and certainly does not explain or suggest how certain features of Cohen could be imported into and made to work with the device of Schwartz. Accordingly claims 6 through 10 and 23 are patentable under 35 U.S.C. 103(a) over any combination of Schwartz, Cohen and Dragon et al., and reconsideration of the rejection of those claims is respectfully requested.

V. Conclusion

All outstanding matters are believed to have been addressed, and the pending claims are believed to be in condition for allowance. Accordingly a notice of allowance for those claims is respectfully requested. If a telephonic conference with the Applicants’ undersigned representative would be useful in resolving any outstanding matters in this application, the Examiner is invited to contact the undersigned at 651-736-4050.

In view of the above, it is submitted that the application is in condition for allowance.

Examination and reconsideration of the application is requested.

Respectfully submitted,

30 January 2009

Date

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